
(2016) 05 JH CK 0028
In the Jharkhand High Court
Case No : L.P.A No. 339 of 2015

Chhotu Manjhi @ Chhatu Manjhi

APPELLANT

Vs

M/s. Central Coalfields Limited

RESPONDENT

Date of Decision : 03-05-2016

Acts Referred:

Citation : (2016) 4 AIRJharR 71 : (2016) 3 JCR 518

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : M/s. M.M. Pal, Senior Advocate and Mahua Palit, Advocate, for the Appellant/Petitioner; M/s. A.K. Das and Pooja Kumari, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Mr. Virender Singh, C.J.—Aggrieved of the dismissal of the writ petition being W.P(S) No.4558/2013, vide impugned order dated 29thth April, 2015 whereby, the appellant writ petitioner (hereinafter referred as petitioner) has preferred the instant Letters Patent Appeal, which is on board in the admission column but with the consent of learned counsel for both the sides we have taken it for its final consideration.

2. Petitioner's father who was working in Kuju Colliery of the respondent-Central Coalfields Limited (for short C.C.L) went missing since 1999. He ultimately died on 24thth October, 2006 and it is thereafter his name was deleted from the roll of C.C.L. The case of the petitioner as set up in the writ petition is that he had applied for compassionate appointment on 26thth February, 2007 i.e after four months of the death of the deceased employee but his case was not considered. The stand taken by respondent C.C.L before the Writ Court as one finds from the counter-affidavit is that the application dated 26thth February, 2007 was never received in the office of respondent-C.C.L and that the petitioner ultimately submitted application in the prescribed format on 14thth August,2012 i.e after the gap of six years. Since respondent-C.C.L had joined issue with regard to the

receipt of the application dated 26th February, 2007 to which finding returned by learned Writ Court is that the petitioner has not been able to bring on record any evidence to substantiate the said plea and there being refusal on the part of the respondent-C.C.L in this regard, it raises a disputed question of fact which cannot be decided by the Writ Court. Learned Writ Court observing that the claim for compassionate appointment cannot be allowed beyond the time prescribed under relevant N.C.W.A circular in vogue, dismissed the writ petition filed by the petitioner which gave him a cause to move this Court in the instant Letters Patent Appeal.

3. Heard Mrs. M.M. Pal, learned Senior Counsel appearing for the petitioner and Ms. Pooja Kumari, learned counsel appearing for the respondent-C.C.L and perused the writ court records, memo of appeal and other documents attached thereto.

4. What the Court finds from Annexure - 4 annexed with the memo of appeal is that an application was moved by the petitioner before the Project Officer of Kuju Colliery. On the left side of the said application, some one known as Sohan has put his initial and written in vernacular "Paya" which means "received". The date mentioned is "26/2/07" underneath the signature of the said Sohan. We also find on the left side of the said application signature of Senior Manager (Personnel), Kuju Colliery. In vernacular it is written "Moolprati ki chayapati", which means that "Xerox copy of the main application". However, we do not find the date of the signature of Senior Manager (Personnel). The matter does not rest here. In Annexure 8, which is a communication between the Welfare Officer(T), Kuju Colliery and the Staff Officer (P& A), Kuju Area dated 4th March, 2013, the Welfare Officer in his communication has attached the photocopy of the application dated 26th February, 2007 which indicates that the original copy of the letter is not available at Kuju Colliery.

5. At this stage, Mrs. Pal, learned counsel, has placed on record the photocopy of the application dated 26th February, 2007 (be attached at its proper place) wherein we do not find any noting of Senior Manager (Personnel), Kuju Colliery. It appears to us that the petitioner was subsequently asked by Senior Manager (Personnel) to provide the photocopy of the original application moved by him on 26th February, 2007. Certainly the application in original could not be in possession of the petitioner as, according to him, it was received by one Sohan in the office of the Project Officer, Kuju Colliery. Another fact, which is on record, is that the petitioner on 22nd June, 2011 has served the Project Officer, Kuju Colliery a legal notice for providing employment to him on compassionate ground as well as to consider the case for release of the retiral benefits of the deceased employee. The issue of retiral benefits has already been settled at the end of the respondent-C.C.L after the petitioner was constrained to file writ petition in this Court being W.P(S) No.5480/2011.

6. Whether Sohan was actually employed in the office of the Project Officer, Kuju Colliery, is not made clear by the respondents in its counter affidavit whereas the

specific case set out by the petitioner is that he had moved an application before the concerned Officer on 26th February, 2007 which fact has been denied by the respondent-C.C.L in its counter-affidavit. What appears to the Court is that respondent-C.C.L without verifying the entire records and taking the advantage of the fact that the original application was not traceable in the office took a stand of not receiving the application dated 26th February, 2007. Thus, raising a disputed question of fact before learned Writ Court, on which issue learned Writ Court refrained from entering into and rightly so. What we feel is that the case in the present set of circumstances requires to be considered to find out whether Sohan who according to the petitioner had received his original application on 26th February, 2007 was working in the office of the Project Officer, Kuju Colliery of the respondent-C.C.L. In case, it is ultimately found on verification that the application dated 26th February, 2007, photocopy of which is available with the petitioner as well as in the office of Welfare Officer (T), Kuju Colliery of respondent-C.C.L. was received by Sohan it would change the entire complexion of the case and perhaps respondent-C.C.L would not justifiably reject the case of the petitioner simply on the ground that the application moved by him in the prescribed format dated 14th August, 2012 is time barred. It needs to be mentioned here that the respondent-C.C.L, in any case, would not be justified in taking a stand that the initial application moved by the petitioner was not in the prescribed format as it is not required in the view of the decision of Hon''ble Supreme Court in the case Shreejith L v. Deputy Director (Education) Kerala & Ors. 2012 (4) PLJR SC 15 (Para 20 refers).

7. As a sequel to the aforesaid discussion, we hereby set aside the impugned judgment dated 29.04.2015 of learned Single Judge and rejection order dated 21.05.2013 and remit the case to respondent-C.C.L to verify the fact and take a reasoned decision without any waste of time preferably within four weeks from the date a copy of the order is made available to the authority concerned, which primarily shall be the responsibility of the appellant-petitioner. Ms. Pooja Kumari, learned counsel for respondent-C.C.L, shall also volunteer to convey the order without any delay.